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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
General Sessions Court
Heath P. Taylor, Circuit Court Judge

Case Nos.
2023-GS-32-02925A
2023-GS-32-02926
2023-GS-32-01737
Appellate Case No.
2024-001522

The State of South Carolina,

Respondent,

v.

Shanya McKnight,

Appellant.

INITIAL REPLY BRIEF OF APPELLANT

Alissa L. Wilson
ALW Law, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201
(585) 217-3566
alissa@alissawilsonlaw.com
South Carolina Bar Number 101602

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....II

ARGUMENT

I. The Appellant preserved the issue of the trial court’s objection to the Appellant’s implied request for a continuance. 1

A. The State misconstrues South Carolina’s rejection of a hyper-technical, exacting standard for issue preservation in its argument that trial counsel did not preserve the issue of a motion for continuance. 1

B. The State ignores the Appellant’s argument of prejudice to the Appellant in the trial court’s refusal to grant a continuance. 2

C. The State failed to recognize that true-billed indictments can be challenged by a defendant and the trial court, despite their presentation to the Grand Jury.....2

II. The trial court should have granted the Appellant’s request for a directed verdict for the Infliction of Great Bodily Injury of a Child..... 4

III. The trial court should have granted the Appellant’s request for a directed verdict for the indictment of Unlawful Conduct Against a Child (Minor Child 2)..... 5

IV. The trial court committed prejudicial, irreversible error through fashioning an erroneous proximate cause jury instruction that changed the fundamental nature of the standard criminal instruction and included inapplicable civil concepts, which caused prejudice through significant juror confusion that contributed to the jurors finding the Appellant guilty due to a gross misunderstanding of how the Appellant had to in fact inflict great bodily injury upon Minor Child 1..... 5

CONCLUSION..... 8

TABLE OF AUTHORITIES

CASES

<i>Busta v. Columbus Hospital Corp.</i> , 276 Mont. 342, 916 P.2d 122 (1996).....	7
<i>Herron v. Century BMW</i> , 395 S.C. 461, 719 S.E.2d 640 (2011).....	1
<i>Mitchell v. Gonzales</i> , 54 Cal.3d 1041, 1 Cal.Rptr.2d 913, 819 P.2d 872 (1991)	7
<i>Norfolk S. Ry. Co. v. Sorrell</i> , (Ginsburg, J., concurring) 549 U.S. 158, 127 S. Ct. 799, 166 L. Ed. 2d 638 (2007).....	7
<i>State v. Baker</i> , 411 S.C. 583, 769 S.E.2d 860 (2015).....	3, 4
<i>State v. Bennett</i> , 415 S.C. 232, 781 S.E.2d 352 (2016).....	4
<i>State v. Dent</i> , 446 S.C. 121, 919 S.E.2d 394 (2025).....	2
<i>State v. Evans</i> , 322 S.C. 78, 470 S.E.2d 97 (1996).....	5
<i>State v. Gentry</i> , 363 S.C. 93, 610 S.E.2d 494 (2005).....	3
<i>State v. Jackson</i> , 297 S.C. 523, 377 S.E.2d 570 (1989).....	7
<i>State v. Jones</i> , 440 S.C. 214, 891 S.E.2d 347 (2023)	6
<i>State v. Kerr</i> , 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998)	6
<i>State v. Leonard</i> , 292 S.C. 133, 355 S.E.2d 270 (1987).....	7
<i>State v. Rothell</i> , 301 S.C. 168, 391 S.E.2d 228 (1990).....	6
<i>State v. Russell</i> , 345 S.C. 128, 546 S.E.2d 202 (Ct.App.20010).....	1
<i>State v. Taylor</i> , 356 S.C. 227, 589 S.E.2d 1 (2003).....	6
<i>State v. Workman</i> , 443 S.C. 369, 905 S.E.2d 119 (2024).....	6

ARGUMENT

I. THE APPELLANT PRESERVED THE ISSUE OF THE TRIAL COURT'S OBJECTION TO THE APPELLANT'S IMPLIED REQUEST FOR A CONTINUANCE.

A. THE STATE MISCONSTRUES SOUTH CAROLINA'S REJECTION OF A HYPER-TECHNICAL, EXACTING STANDARD FOR ISSUE PRESERVATION IN ITS ARGUMENT THAT TRIAL COUNSEL DID NOT PRESERVE THE ISSUE OF A MOTION FOR CONTINUANCE.

The State argues that the Appellant failed to move for a continuance in its objection to the grand jury's amendment of the indictment of Infliction of Great Bodily Injury of a Child and therefore failed to preserve the issue for review (Initial Br. of Resp't. p. 6). Although the Appellant did not argue at trial the magic words of "motion for continuance", the failure to include the specific request for a continuance is not an automatic abandonment of the objection. South Carolina courts do not require a party "to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011)(citing *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct.App.20010)). Further, South Carolina appellate courts recognize "the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner." *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011).

In this case, the Appellant in fact objected that removing the intent language from the original indictment changed the nature of the offense, thereby requiring a different theory of defense, which caused unfair surprise; violated the Appellant's due process rights; and deprived the Appellant of sufficient notice (Initial Br. of Appellant p. 13). The Appellant emphasized that defense counsel had spent approximately a year preparing a defense to a knowing and willful Infliction of Great Bodily Injury of a Child and now had to reframe the defense to an offense without requisite intent; this was a clearly implied request for a continuance (Initial Br. of

Appellant pp. 12-13). Further, the trial court ruled on the issue, and the issue was preserved for review (Initial Br. Of Resp't. pp.12).

B. THE STATE IGNORES THE APPELLANT'S ARGUMENT OF PREJUDICE TO THE APPELLANT IN THE TRIAL COURT'S REFUSAL TO GRANT A CONTINUANCE.

The State contends that the Appellant did not demonstrate how she was prejudiced by the superseding indictment. The State's argument that defense counsel "agreed" with the State's recitation of the elements of the crime of Infliction of Great Bodily Injury of a Child in its closing argument is irrelevant (Initial Br. of Resp't. p. 9). The Appellant's objection is not that the offense as stated in the State's closing argument is wrong; instead, the Appellant's objection is that the State disingenuously removed the intent language from the indictment at the very last minute, thereby changing the nature of the offense and rendering essentially useless the Appellant's year-long reliance on the original indictment of a crime with specific intent (Initial Br. of Appellant, pp. 13-14).

The prejudice to Appellant was that the defense that she had prepared for over a year was gutted by the State's removal of the intent language from the indictment on the eve of trial. The indictment is formal notice of the theories the State is going to present at trial, so that the Appellant can prepare a defense. Whether McKnight had the ability to research the statute is irrelevant, because the State put her on notice of the theories it was going to present at trial through the indictment – that it intended to prove she **knowingly and willingly** inflicted great bodily injury on a child. *State v. Dent*, 446 S.C. 121, 125, 9191 S.E.2d 394 (2025).

C. THE STATE FAILED TO RECOGNIZE THAT TRUE-BILLED INDICTMENTS CAN BE CHALLENGED BY A DEFENDANT AND THE TRIAL COURT, DESPITE THEIR PRESENTATION TO THE GRAND JURY.

The State once again misconstrues the Appellant's argument that an amended indictment cannot change the nature of an offense on the eve of trial without a sufficient remedy to the Appellant (Initial Br. of Resp't. p. 8). The State falsely claims that the Appellant's rationale that indictments that change the nature of an offense at the last minute deprive the defendant of fair notice only applies to indictments amended by the State or trial Court (Initial Br. of Resp't. p. 8). Once again, the State misses the point of the Appellant's objection to the last-minute amendment of the indictment of Infliction of Great Bodily Injury of a Child (Initial Br. of Appellant, p. 15). The Appellant does not argue that a grand jury cannot issue an amended indictment; the Appellant argues that an indictment cannot be amended to materially change the offense at the last minute and thereby deprive the defendant notice of the charges against the defendant; the indictment is indeed itself a notice document (Initial Br. of Appellant, pp. 9-10) .

The State argues that an indictment or amended indictment returned by a grand jury removes from the trial court the power to find an indictment insufficient (Initial Br. of Resp't. p. 8). However, the State is wrong. Even in cases of true-billed indictments and amended indictments, the Appellant has the right to "question... the propriety of the accusation, the manner in which it has been presented, [and] the source from which it proceeds and have these matters promptly and properly determined. . ." *State v. Baker*, 411 S.C. 583, 589, 769 S.E.2d 860, 863 (2015)(quoting *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 499-500 (2005)(emphasis added to "the manner in which it has been presented" by *Baker* court removed)). In the instant case, the Appellant had a right to object to the eve-of-trial indictment of Infliction of Great Bodily Injury Upon a Child that was true-billed by a grand jury, and the trial court had a right to rule on the objection (Initial Br. of Appellant, pp. 8-9).

The *Baker* opinion is relevant to the instant case because it involved indictments and amended indictments true-billed by the grand jury. *State v. Baker* at 590, 769 S.E.2d at 864. In *Baker*, the South Carolina Supreme Court ruled that after preparing over a year a defense based on the State's grounds in the original indictments, the State's amended indictments returned two weeks before trial caused a prejudicial impediment to the defendant to sufficiently research and defend against the broader timeline in the amended indictments. *Baker* at 590, 769 S.E.2d at 864. The *Baker* opinion found that the trial court's refusal to quash these amended indictments was in error and reversed the decision. *Id.* at 592, 769 S.E.2d at 856. Although *Baker* dealt with the issue of the last-minute presentation of an unconstitutionally overbroad time period in an amended indictment, the *Baker* rationale and facts of the case are relevant to the instant case; in the instant case, the amended indictment was presented only one day, not two weeks, before trial. Further, as the trial court in *Baker* had the power to quash a true-billed indictment, the trial court in the instant case had the power to grant the defendant a continuance to reevaluate its defense.

II. THE TRIAL COURT SHOULD HAVE GRANTED THE APPELLANT'S REQUEST FOR A DIRECTED VERDICT FOR THE INFLICTION OF GREAT BODILY INJURY OF A CHILD.

The State cites *State v. Bennett* for its holding that in a direct verdict analysis, the evidence is viewed in a light most favorable to the State, and any substantial evidence which reasonably tends to provide the guilt of the defendant supports the denial of a directed verdict (Initial Br. of Resp't., p. 10)(citing *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016)). The State argues that the evidence that Minor Child 1 suffered a broken tibia that required a cast that prevented her from crawling around for approximately two months, even more significant for a ten-month old infant, was sufficient for a reasonable juror to find the Appellant guilty (Initial Br. of Resp't., p. 11). However, the State failed to address in this argument the facts presented by the

Appellant that Minor Child 1's broken tibia was non-displaced, did not have to be reset, and required only a normal 6-week cast. Those facts render the evidence of guilt no longer substantial, instead now insufficient for a reasonable juror to find that the Appellant satisfied all elements of the crime, necessary for a supported guilty verdict.

III. THE TRIAL COURT SHOULD HAVE GRANTED THE APPELLANT'S REQUEST FOR A DIRECTED VERDICT FOR THE INDICTMENT OF UNLAWFUL CONDUCT AGAINST A CHILD (MINOR CHILD 2).

The State argues that the Appellant never raised the issue of "material variance" between the "unreasonable risk of harm" element of the offense and the proof offered at trial (Initial Br. of Resp't., p. 13). However, the State is splitting hairs, because South Carolina law holds that a material variance between an element of the offense charged in an indictment and the proof of such element *entitles the defendant to a directed verdict*. *State v. Evans*, 322 S.C. 78, 81-82, 470 S.E.2d 97, 99 (1996)(emphasis added). As noted by the Appellant, there was no testimony that swaddling the child, laying the child on its stomach, or lifting the child by the arm are criminal acts in this state, nor was there any testimony that these acts *in fact* placed Minor Child 2 at an unreasonable risk of harm or any injury that actually occurred (Initial Br. of Appellant .p. 13).

IV. THE TRIAL COURT COMMITTED PREJUDICIAL, IRREVERSIBLE ERROR THROUGH FASHIONING AN ERRONEOUS PROXIMATE CAUSE JURY INSTRUCTION THAT CHANGED THE FUNDAMENTAL NATURE OF THE STANDARD CRIMINAL INSTRUCTION AND INCLUDED INAPPLICABLE CIVIL CONCEPTS, WHICH CAUSED PREJUDICE THROUGH SIGNIFICANT JUROR CONFUSION THAT CONTRIBUTED TO THE JURORS FINDING THE APPELLANT GUILTY DUE TO A GROSS MISUNDERSTANDING OF HOW THE APPELLANT HAD TO IN FACT INFLICT GREAT BODILY INJURY UPON MINOR CHILD 1.

The State argues that the Appellant's suggestion that a second actor could have contributed to Minor Child 1's broken tibia required the judge to instruct the jury on proximate cause. (Initial Br. of Resp't. p. 15). Despite the Appellant's trial strategy of creating doubt in the State's case

against the Appellant for Infliction of Great Bodily Injury of a Child, the Appellant's defense did not necessitate a jury charge on proximate cause that truncated relevant parts from the standard criminal bench book and created a hodgepodge mixture of civil and criminal liability in the instruction. Although the State argued against the Appellant's rationale that the proximate cause law for criminal cases has always dealt with homicide cases, the trial judge's truncation of the word "homicide" from the theme of the criminal jury instruction on proximate cause created a confusing concept with no precedential value of proximate cause for non-homicide cases (Initial Br. of Resp't. p. 16). Particularly after the State had removed the language of intent from Infliction of Great Bodily Injury of a Child offense, the trial judge's injection of negligence concepts into the charge and the roping in of another possible cause of great bodily injury created confusion from a legal concept *already known* for its confusion.

To be reversed on appeal, a jury charge must be both erroneous and prejudicial. *State v. Jones*, 440 S.C. 214, 235, 891 S.E.2d 347, 358 (2023)(citing *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003)). To determine whether an erroneous jury charge is harmless, the test is whether, beyond a reasonable doubt, "the error complained of did not contribute to the verdict"; signifying "not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." *State v. Workman*, 443 S.C. 369, 377, 905 S.E.2d 119, 123 (2024)(quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." *Id.*

The error in this case besides the introduction of a concept tied to negligence for a crime with no mens rea specified is the error of confusing and misleading the jury. *State v. Rothell*, 301

S.C. 168, 169–70, 391 S.E.2d 228, 229 (1990)(citing *State v. Leonard*, 292 S.C. 133, 355 S.E.2d 270 (1987)). The test of confusion is what a reasonable juror would understand the charge to mean. *Id.* (citing *State v. Jackson*, 297 S.C. 523, 377 S.E.2d 570 (1989)). When a United States Supreme Court Justice lamented that the confusion of “proximate cause” supported its removal from jury instructions, the confusion to jurors can be no clearer:

[i]f the term “proximate cause” is confounding to jurists, it is even more bewildering to jurors. Nothing in today's opinion should encourage courts to use “proximate cause,” or any term like it, in jury instructions. “[L]egal concepts such as ‘proximate cause’ and ‘foreseeability’ are best left to arguments between attorneys for consideration by judges or justices; they are not terms which are properly submitted to a lay jury, and when submitted can only serve to confuse jurors and distract them from deciding cases based on their merits.” *Norfolk S. Ry. Co. v. Sorrell*, (Ginsburg, J., concurring) 549 U.S. 158, 180, 127 S. Ct. 799, 814, 166 L. Ed. 2d 638 (2007)(quoting *Busta v. Columbus Hospital Corp.*, 276 Mont. 342, 371, 916 P.2d 122, 139 (1996)). Accord *Mitchell v. Gonzales*, 54 Cal.3d 1041, 1050, 1 Cal.Rptr.2d 913, 819 P.2d 872, 877 (1991) (“It is reasonably likely that when jurors hear the term ‘proximate cause’ they may misunderstand its meaning.”)

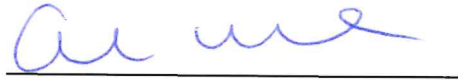
In this case, it is impossible that the confusing jury charge of proximate cause regarding one defendant whose state of mind was deemed irrelevant would not mislead jurors to conclude that if the Appellant had any part in the fracture of Minor Child 1’s bone, surely it must have been one of one or one of many “proximate cause(s)” of such injury, requiring the jury to find the Appellant guilty of Infliction of Great Bodily Injury of a Child.

Thus, a confusing jury charge that was an erroneous mixture of civil and criminal concepts and that caused the jury (or even one juror) to find the Appellant guilty of causing the Infliction of Great Bodily Injury of a Child is by definition irreversible error that should be reversed.

CONCLUSION

For these reasons and the reasons hereby adopted by the Initial Brief of the Appellant, this Court should respectfully find irreversible error that dictates a remand of this case.

Respectfully submitted,



Alissa L. Wilson
ALW Law, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201
(585) 217-3566
alissa@alissawilsonlaw.com
South Carolina Bar Number 101602

Attorney for Appellant

This 25th day of February, 2026